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Shainis & Peltzman

Counselors at Law
Suite 200
2000 L Street, N.W.
Washington, D.C. 20036

Aaron R. Shainis
Lee J. Peltzman

(202) 416-1633
Fax (202) 416-1823

Of Counsel
William H. BuRoss, III
Matthew L. Leibowitz

October 14, 1994

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

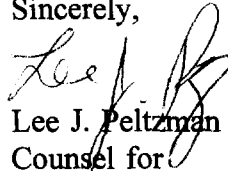
Re: Amendment of Section 73.202(b)
FM Table of Allotments
Benavides and Bruni, Texas

Dear Mr. Caton:

Transmitted herewith, on behalf of Benavides Communications, permittee of Station KXTM(FM), Benavides, Texas, is an original and four (4) copies of its Petition for Rulemaking in the above-referenced matter.

Should questions arise concerning this matter, please communicate with this office.

Sincerely,


Lee J. Peltzman
Counsel for

BENAVIDES COMMUNICATIONS

Enclosure

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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OCT 14 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:

Amendment of Section 73.202(b)
FM Table of Allotments
(Benavides and Bruni, Texas)

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MM DOCKET NO.
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To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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PETITION FOR RULEMAKING

Benavides Communications ("BC"), permittee of Station KXTM(FM), Benavides, Texas, by its attorney, hereby respectfully requests that Section 73.202(b) of the Commission's rules be amended as follows:

	Channel No.	
	<u>Present</u>	<u>Proposed</u>
Benavides, Texas	299C2	254A
Bruni, Texas		299C2

The allocation of Channel 299C2 at Bruni, Texas, can be made in accordance with the Commission's minimum distance separation and principal community coverage requirements if the Commission deletes Channel 299C2 at Benavides, Texas. BC additionally requests the concurrent modification of Station KXTM(FM) to specify operation on Channel 299C2 at Bruni pursuant to Section 1.420(i) of the Commission's rules, which permits the permittee of an existing station a new community of license without affording other interested parties an opportunity to file competing expressions of interest and the allotment of Channel 254A at Benavides. The allotment of Channel 254A at Benavides can be made in accordance with the Commission's minimum distance separation and principal community coverage requirements with

a site restriction of 11.6 kilometers.

Clearly, adoption of BC's proposal would result in a preferential arrangement of allotments by bringing a first local aural transmission service to the community of Bruni, Texas. While at first glance, the deletion of Channel 299C2 from Benavides would seem a problem, since it would leave that community without other service, the "problem" is more theoretical than real under Commission precedent. The Commission has stated that it believes "the public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another." Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd. 4870 (1989), recon. granted in part, 5 FCC Rcd. 7094, 7097 (1990) (emphasis added). Here, however, there is no "existing" service which can continue, since no station has been operational at Benavides.^{1/} Moreover, as part of its proposal, BC seeks the allotment of a substitute channel at Benavides. Therefore, with the allotment of that channel to Benavides, the community will be no worse off than it is at present in the event that the Commission adopts BC's proposal. Finally, it should be noted that 3.16 mV/m service will still be provided to all of Benavides by KXTM(FM) even with the adoption of BC's proposal. The proposal meets the requirements of Section 1.420(i) of the Commission's rules in that the requested allotment to Bruni, Texas, is mutually-exclusive with its present allotment of Channel

^{1/} The Commission has noted that, for the purpose of change of community rule makings, unconstructed permits are not considered to be an "existing service." 5 FCC Rcd. at 7097. See also Farmington and Gallup, New Mexico, 7 FCC Rcd. 2382, 2383 (1992). Also, because Station KXTM(FM) has never been on the air, there can be no existing reception service lost. Finally, because the KXTM(FM) construction permit was not granted as a result of a comparative hearing, there is no requirement that the station operate at Benavides for at least one year before seeking a change in community.

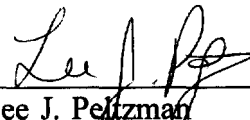
299C2 at Benavides, Texas.

Accordingly, for the reasons stated above, BC requests that the Commission adopt this proposal to delete Channel 299C2 at Benavides, Texas, and allot Channel 299C2 at Bruni, Texas, and currently modify the permit for Station KXTM(FM) to specify operation on Channel 299C2 at Bruni. The public interest would be served by the reallocation of Channel 299C2 from Benavides to Bruni, since it would provide Bruni with its first local aural transmission service, yet, would not deprive Benavides of its sole "existing" local service. Cf. 7 FCC Rcd. at 2383, para. 6. Channel 299C2 can be allotted to Bruni in compliance with the Commission's minimum distance separation requirements. Additionally, the Commission should substitute Channel 254A at Benavides. That allotment can be made in accordance with the Commission's minimum distance separation requirements with a site restriction of 11.6 kilometers southwest. In the event that Channel 299C2 is allotted to Bruni and Channel 254A is allotted to Benavides, BC will promptly file applications for construction permits for both communities and, once those applications are granted, will immediately construct the stations and commence broadcasting.

Respectfully submitted,

BENAVIDES COMMUNICATIONS

By:



Lee J. Peltzman
Its Attorney

SHAINIS & PELTZMAN
2000 L Street, N. W. - #200
Washington, D. C. 20036
202/416-1633

October 14, 1994

ORIGINAL

TECHNICAL STATEMENT IN SUPPORT
OF PROPOSED RULE MAKING TO
AMEND §73.202(b), FM TABLE OF ALLOTMENTS

on behalf of
BENAVIDES COMMUNICATIONS
NEW-FM RADIO
BRUNI, TEXAS

JUNE, 1994

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WILLOUGHBY & VOSS
BROADCAST TECHNICAL CONSULTANTS
P.O. BOX 701190
SAN ANTONIO, TEXAS 78270-1190
(210) 525-1111

WILLOUGHBY & VOSS

TECHNICAL STATEMENT
IN SUPPORT OF PROPOSED RULE MAKING
TO CHANGE COMMUNITY OF ALLOTMENT
BENAVIDES COMMUNICATIONS
JUNE, 1994

The firm of Willoughby & Voss has been retained by Benavides Communications, permittee of NEW FM, FCC File No. BPH-921022MG, to prepare the instant technical statement in support of a petition for rule making to amend the FM Table of Allotments by deleting Channel 299C2 at Benavides, Texas, and assigning Channel 299C2 to Bruni, Texas. Further, it is requested that the NEW permit and/or license (should the license be issued prior to grant of this PRM), be modified to reflect Bruni as the Community of License.

An allocation study of Channel 299C2 was performed, using reference coordinates 27° 25' 31" N.L., 98° 50' 21" W.L. and is found to meet all Class C2 distance separation requirements of §73.207 of the Commission's Rules. Exhibit A is a tabulation of the allocation study. The reference coordinates are for the center of Bruni, Texas. This proposed facility will serve all of the community of Bruni with the required 3.16 mV/m contour.

Adoption of this proposal will provide Bruni with "first local service". The instant proposal is mutually exclusive with the present assignment of NEW-299C2 to Benavides, Texas.

The deletion of Channel 299C2 at Benavides, will leave that community with no local service, therefore, it is further proposed that Channel 254A6 be allotted to Benavides, Texas. Channel 254A6 can be located at allocation reference coordinates 27° 29' 48" N.L., 98° 26' 59" W.L. This site is restricted southwest of Benavides, by 11.6 kilometers. This site restriction is necessary to meet all separation requirements. This site and the area to locate will provide 3.16 mV/m service to all of Benavides.

BENAVIDES COMMUNICATIONS
TECHNICAL STATEMENT

WILLOUGHBY & VOSS

In this manner, Benavides will not be deprived of first local service, and is available for use by any interested party, while providing Bruni with first local service also.

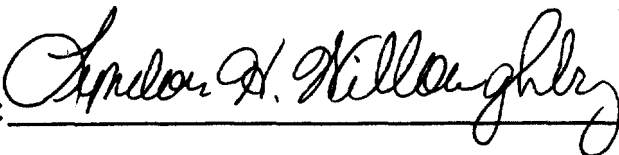
In light of the above facts, and the desire of the Commission for diversity and efficient spectrum usage, it is requested that the Table of Allotments contained in Section §73.202(b) of the Commission's Rules be amended to read as follows:

<u>COMMUNITY</u>	<u>PRESENT</u>	<u>PROPOSED</u>
Benavides, TX	299C2	254A6
Bruni, TX	none	299C2

Upon allotment of the above requested changes, formal application for the Bruni facility will be filed with the FCC.

The foregoing was prepared on behalf of Benavides Communications, by Lyndon H. Willoughby, of Willoughby & Voss, San Antonio, Texas. The affiant's qualifications are contained in previous filings and are a matter of record with the Federal Communications Commission. The statements and data contained herein are true and correct of his own knowledge, except as to statements made on information and belief and as to those statements, he believes them to be true and correct.

Date: June 15, 1994

By: 
Lyndon H. Willoughby, Affiant

BENAVIDES COMMUNICATIONS
TECHNICAL STATEMENT

WILLOUGHBY & VOSS

ALLOCATION STUDY 299C2 AT BRUNI, TEXAS

FM Channel Study for Channel 299C2 at 27-25-31 98-50-21
 Safe Distance of 25.0 Kilometers
 New (6 kW) Class A spacings employed

***** STANDARD DISCLAIMER APPLIES *****

Channel Call Applicant/Licensee	City	State	Lat Long	Distance Bearing	Reqr'd Clear
246B	Nuevo Laredo	, TA OM	27-35-41 99-35-48	77.16 284.26	25.0 52.16
246B XHNLOFM	Nuevo Laredo	, TA 28M	27-29-13 99-30- 7	65.87 276.11	25.0 40.87
296A	USED Bishop	, TX OM	27-39-10 97-54-59	94.57 74.33	55.0 39.57
296A	Nuevo Laredo	, TA OM	27-29-48 99-30- 1	65.83 277.05	65.0 0.83
296A KFLZ Cismek Corporation	LIC Bishop	, TX 91M	27-39-10 97-54-59	94.57 74.33	55.0 39.57
297A	VACANT Ingleside	, TX OM	27-52-54 97-12-42	168.37 72.15	55.0 113.37
297A	Ciudad Guerrero	, TA OM	26-46-45 99-20-22	87.10 214.83	65.0 22.10
297A NEW BK Radio	APP Ingleside	, TX 91M	27-52- 0 97-13- 9	167.18 72.62	55.0 112.18
298C KXTNFM Tichenor Media System, Inc.	LIC San Antonio	, TX 448M	29-16-29 98-15-52	212.56 15.24	188.0 24.56
298A	Sabinas	, CI OM	27-50-34 101- 7-23	230.10 282.12	105.0 125.10
298C	USED San Antonio	, TX OM	29-16-29 98-15-52	212.56 15.24	188.0 24.56
299B XHMNFM	Monterrey	, NL -64M	25-39-20 100-19-54	246.10 217.52	240.0 6.10
299C2	VACANT Benavides	, TX OM	27-35-18 98-28-31	40.24 63.24	190.0 -149.76
299B	Monterrey	, NL OM	25-39-20 100-19-54	246.10 217.52	240.0 6.10

BENAVIDES COMMUNICATIONS
 299C2 AT BRUNI, TEXAS
 EXHIBIT A

WILLOUGHBY & VOSS

ALLOCATION STUDY 299C2 AT BRUNI, TEXAS

FM Channel Study for Channel 299C2 at 27-25-31 98-50-21
Safe Distance of 25.0 Kilometers
New (6 kW) Class A spacings employed

***** STANDARD DISCLAIMER APPLIES *****

Channel Call Applicant/Licensee	City	State	Lat Long	Distance Bearing	Reqr'd Clear
299C2 NEW APP Benavides Benavides Communications		, TX 150M	27-35-13 98-28-40	39.95 63.27	190.0 -150.05
299C2 NEW APP Benavides Jalapeno Tejano Broadcasting		, TX 150M	27-34- 6 98-43- 4	19.88 37.09	190.0 -170.12
300C1 USED Edinburg		, TX OM	26-15- 1 97-55-21	158.90 144.81	158.0 0.90
300C1 KVLV LIC Edinburg Tippie Communications, Inc.		, TX 219M	26-15- 8 97-55-22	158.71 144.77	158.0 0.71
300B Piedras Negras		, CI OM	28-42-25 100-31- 2	217.68 311.12	170.0 47.68
300C1 KIXS LIC Victoria Gulfstar Broadcasting, L.C.		, TX 110M	28-46- 3 96-59-11	235.11 50.32	158.0 77.11
300B XHPCFM Piedras Negras		, CI 146M	28-41-10 100-33- 2	218.70 310.11	170.0 48.70
300C1 USED Victoria		, TX OM	28-46- 3 96-59-11	235.11 50.32	158.0 77.11

BENAVIDES COMMUNICATIONS
299C2 AT BRUNI, TEXAS
EXHIBIT A

WILLOUGHBY & VOSS

ALLOCATION STUDY 254A6 AT BENAVIDES, TEXAS

FM Channel Study for Channel 254A6 at 27-29-48 98-26-59
 Safe Distance of 25.0 Kilometers
 New (6 kW) Class A spacings employed

***** STANDARD DISCLAIMER APPLIES *****

Channel Call Applicant/Licensee	City	State	Lat Long	Distance Bearing	Reqr'd Clear
201A KHOY LIC Laredo Diocesan Telecommunications Corp.		TX	27-31-14 106M	105.98 271.68	10.0 95.98
			1.80 kW		
251C1 KRRG LIC Laredo Encarnacion A. Guerra		TX	27-31-14 213M	105.98 271.68	75.0 30.98
			96.00 kW		
251C1 USED Laredo		TX	27-31-14 OM	105.98 271.68	75.0 30.98
			0.00 kW		
252A KKHQ LIC Odem Coastal Digital Broadcasting, L.P.		TX	27-53-31 91M	103.14 64.65	31.0 72.14
			3.00 kW		
252C3 VACANT Odem		TX	27-53-31 OM	103.14 64.65	42.0 61.14
			0.00 kW		
252C3 KKHQ APP Odem Coastal Digital Broadcasting, L.P.		TX	27-25-31 98M	93.72 94.63	42.0 51.72
			11.00 kW		
252A DEL Pleasanton Reding Broadcasting		TX	29- 0- 1 OM	166.82 357.30	31.0 135.82
			0.00 kW		
252A KBUC LIC Pleasanton Atascosa Broadcasting Co., Inc.		TX	29- 0- 1 91M	166.82 357.30	31.0 135.82
			3.00 kW		
252A USED Pleasanton		TX	29- 0- 1 OM	166.82 357.30	31.0 135.82
			0.00 kW		
253A KRBH DEL Hondo Reding Broadcasting		TX	29-15-11 OM	205.58 341.39	72.0 133.58
			0.00 kW		
253C KQXX CP Mcallen Bravo Broadcasting Company		TX	26- 7-14 304M	164.76 157.59	165.0 -0.24
			100.00 kW		
253C USED Mcallen		TX	26- 5-59 OM	166.31 158.40	165.0 1.31
			0.00 kW		
253C2 KBUC ADD Pleasanton Reding Broadcasting		TX	29-11- 0 OM	187.78 354.54	106.0 81.78
			0.00 kW		
253A USED Hondo		TX	29-14-43 OM	205.78 340.50	72.0 133.78
			0.00 kW		

BENAVIDES COMMUNICATIONS
 254A6 AT BENAVIDES, TEXAS
 EXHIBIT B

WILLOUGHBY & VOSS

ALLOCATION STUDY 254A6 AT BENAVIDES, TEXAS

FM Channel Study for Channel 254A6 at 27-29-48 98-26-59
 Safe Distance of 25.0 Kilometers
 New (6 kW) Class A spacings employed

***** STANDARD DISCLAIMER APPLIES *****

Channel	Call	City	State	Lat	Distance	Regrd
Applicant/Licensee				Long	Bearing	Clear
253C	KQXX	LIC Mcallen	, TX	26- 5-59	166.31	165.0
Bravo Broadcasting Company			366M	97-50-16	158.40	1.31
253A	KRBH	CP Hondo	, TX	29-15-11	205.58	72.0
Radio Medina, Inc.			83M	99- 7-29	341.39	133.58
254D	K254AC	CP San Antonio	, TX	29-30-35	223.32	0.0
April Communications Group, Inc.			OM	98-33- 8	357.45	
254C1		USED Victoria	, TX	28-48-46	199.59	200.0
			OM	97- 3-45	42.73	-0.41
254C1	KTXNFM	LIC Victoria	, TX	28-48-46	199.59	200.0
Cosmo Enterprises of Victoria, Inc.			77M	97- 3-45	42.73	-0.41
254A		Zaragoza	, CI	28-27-26	265.68	175.0
			OM	100-55-26	294.19	90.68
254B		Monclova	, CI	26-54-14	301.43	240.0
			OM	101-25- 8	258.09	61.43
255C2		VACANT Dilley	, TX	28-40-18	148.21	106.0
			OM	99-10-12	331.64	42.21
255C2	NEW	APP Dilley	, TX	28-44-51	154.93	106.0
Dilley Broadcasters			83M	99- 9-15	333.63	48.93
256C1		USED Corpus Christi	, TX	27-45- 7	84.94	75.0
			OM	97-38-18	70.36	9.94
256C1	KRYSFM	LIC Corpus Christi	, TX	27-45-11	85.08	75.0
Range Broadcasting Company, L.P.			284M	97-38-14	70.31	10.08
257B	XHNKFM	Nuevo Laredo	, TA	27-29-34	105.33	65.0
			35M	99-30-56	270.01	40.33
257B		Nuevo Laredo	, TA	27-29-34	105.33	65.0
			OM	99-30-56	270.01	40.33

BENAVIDES COMMUNICATIONS
 254A6 AT BENAVIDES, TEXAS
 EXHIBIT B